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## A BILL FOR AN ACT

RELATING TO THE INSURANCE HOLDING COMPANY SYSTEM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 431:11-102, Hawaii Revised Statutes, is  
2 amended by amending the definition of "domestic insurance  
3 holding company system" to read as follows:

4           "Domestic insurance holding company system" [~~means an~~  
5 ~~insurance holding company system that consists of an ultimate~~  
6 ~~controlling person formed in this State prior to January 1,~~  
7 ~~2000, and its insurer affiliates, all of which are domestic~~  
8 ~~insurers authorized to transact insurance business only in this~~  
9 ~~State.~~] consists of two or more affiliated persons, one or more  
10 of whom is an insurer, with an ultimate controlling person  
11 formed in this State prior to January 1, 1995, and its insurer  
12 affiliates, all of whom are domestic insurers authorized to  
13 transact insurance business only in this State."

14           SECTION 2. Section 431:11-104, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:



1           "(b) The statement to be filed with the commissioner  
2 hereunder shall be made under oath or affirmation and shall  
3 contain the following information:

4           (1) The name and address of each person by whom or on  
5 whose behalf the merger or other acquisition of  
6 control referred to in subsection (a) is to be  
7 effected (hereinafter called "acquiring party"), and:

8           (A) If the person is an individual, the principal  
9 occupation and all offices and positions held by  
10 the individual during the past five years, and  
11 any conviction of crimes other than minor traffic  
12 violations during the past ten years; or

13           (B) If the person is not an individual, a report of  
14 the nature of its business operations during the  
15 past five years or for such lesser period as the  
16 person and any predecessors thereof shall have  
17 been in existence; an informative description of  
18 the business intended to be done by the person  
19 and the person's subsidiaries; and a list of all  
20 individuals who are or who have been selected to  
21 become directors or executive officers of the



1 person, or who perform or will perform functions  
2 appropriate to the positions. The list shall  
3 include for each individual the information  
4 required by subparagraph (A);

5 (2) The source, nature, and amount of the consideration  
6 used or to be used in effecting the merger or other  
7 acquisition of control, a description of any  
8 transaction wherein funds were or are to be obtained  
9 for any purpose (including any pledge of the insurer's  
10 stock, or the stock of any of its subsidiaries or  
11 controlling affiliates), and the identity of persons  
12 furnishing the consideration; provided that where a  
13 source of the consideration is a loan made in the  
14 lender's ordinary course of business, the identity of  
15 the lender shall remain confidential, if the person  
16 filing the statement requests confidentiality;

17 (3) Fully audited financial information as to the earnings  
18 and financial condition of each acquiring party for  
19 the preceding five fiscal years (or for the lesser  
20 period as the acquiring party and any predecessors  
21 thereof shall have been in existence), and similar



- 1           unaudited information as of a date not earlier than  
2           ninety days prior to the filing of the statement;
- 3           (4) Any plans or proposals that each acquiring party may  
4           have to liquidate the insurer, to sell its assets or  
5           merge or consolidate it with any person, or to make  
6           any other material change in its business or corporate  
7           structure or management;
- 8           (5) The number of shares of any security referred to in  
9           subsection (a) that each acquiring party proposes to  
10          acquire, and the terms of the offer, request,  
11          invitation, agreement, or acquisition referred to in  
12          subsection (a), and a statement as to the method by  
13          which the fairness of the proposal was arrived at;
- 14          (6) The amount of each class of any security referred to  
15          in subsection (a) that is beneficially owned or  
16          concerning which there is a right to acquire  
17          beneficial ownership by each acquiring party;
- 18          (7) A full description of any contracts, arrangements, or  
19          understandings with respect to any security referred  
20          to in subsection (a) in which any acquiring party is  
21          involved including but not limited to transfer of any



1 of the securities, joint ventures, loan or option  
2 arrangements, puts or calls, guarantees of loans,  
3 guarantees against loss or guarantees of profits,  
4 division of losses or profits, or the giving or  
5 withholding of proxies. The description shall  
6 identify the persons with whom the contracts,  
7 arrangements, or understandings have been entered  
8 into;

9 (8) A description of the purchase of any security referred  
10 to in subsection (a) during the twelve calendar months  
11 preceding the filing of the statement by any acquiring  
12 party, including the dates of purchase, names of the  
13 purchasers, and considerations paid or agreed to be  
14 paid therefore;

15 (9) A description of any recommendations to purchase any  
16 security referred to in subsection (a) made during the  
17 twelve calendar months preceding the filing of the  
18 statement by any acquiring party, or by anyone based  
19 upon interviews or at the suggestion of the acquiring  
20 party;



- 1 (10) Copies of all tender offers for, requests or  
2 invitation for tenders of, exchange offers for, and  
3 agreements to acquire or exchange any securities  
4 referred to in subsection (a), and (if distributed) of  
5 additional soliciting material relating thereto;
- 6 (11) The term of any agreement, contract, or understanding  
7 made with or proposed to be made with any broker-  
8 dealer as to solicitation of securities referred to in  
9 subsection (a) for tender, and the amount of any fees,  
10 commissions, or other compensation to be paid to  
11 broker-dealers with regard thereto;
- 12 (12) An agreement by the person required to file the  
13 statement referred to in subsection (a) that the  
14 person will provide the annual report, specified in  
15 section [~~431:11-105(1)~~], 431:11-105(b)(1), for so long  
16 as control exists;
- 17 (13) An acknowledgment by the person required to file the  
18 statement referred to in subsection (a) that the  
19 person and all subsidiaries within the person's  
20 control in the insurance holding company system will  
21 provide information to the commissioner upon request



1 as necessary to evaluate enterprise risk to the  
2 insurer; and

3 (14) Any additional information as the commissioner may by  
4 rule prescribe as necessary or appropriate for the  
5 protection of policyholders of the insurer or in the  
6 public interest.

7 If the person required to file the statement referred to in  
8 subsection (a) is a partnership, limited partnership, or other  
9 group, the commissioner may require that the information called  
10 for by paragraphs (1) through (14) shall be given with respect  
11 to each partner of the partnership or limited partnership, each  
12 member of the group, and each person who controls such partner  
13 or member. If any partner, member, or person is a corporation  
14 or the person required to file the statement referred to in  
15 subsection (a) is a corporation, the commissioner may require  
16 that the information called for by paragraphs (1) through (14)  
17 shall be given with respect to the corporation, each officer and  
18 director of the corporation, and each person who is directly or  
19 indirectly the beneficial owner of more than ten per cent of the  
20 outstanding voting securities of the corporation.



1           If any material change occurs in the facts set forth in the  
2 statement filed with the commissioner and sent to the insurer  
3 pursuant to this section, an amendment setting forth the change,  
4 together with copies of all documents and other material  
5 relevant to the change, shall be filed with the commissioner and  
6 sent to the insurer within two business days after the person  
7 learns of the change. The insurer shall send the amendment to  
8 its shareholders."

9           SECTION 3. Section 431:11-105, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

11           "(b) Every insurer subject to registration shall file the  
12 registration statement with the commissioner on a form and in a  
13 format prescribed by the National Association of Insurance  
14 Commissioners, which shall contain the following current  
15 information:

16           (1) The capital structure, general financial condition,  
17 ownership, and management of the insurer and any  
18 person controlling the insurer;

19           (2) The identity and relationship of every member of the  
20 insurance holding company system;





- 1           (3) The following agreements in force, and transactions  
2           currently outstanding or that have occurred during the  
3           last calendar year between the insurer and its  
4           affiliates:
- 5           (A) Loans, other investments, or purchases, sales, or  
6           exchanges of securities of the affiliates by the  
7           insurer or of the insurer by its affiliates;
- 8           (B) Purchases, sales, or exchange of assets;
- 9           (C) Transactions not in the ordinary course of  
10          business;
- 11          (D) Guarantees or undertakings for the benefit of an  
12          affiliate that result in an actual contingent  
13          exposure of the insurer's assets to liability,  
14          other than insurance contracts entered into in  
15          the ordinary course of the insurer's business;
- 16          (E) All management agreements, all service contracts,  
17          and all cost-sharing arrangements;
- 18          (F) Reinsurance agreements;
- 19          (G) Dividends and other distributions to  
20          shareholders; and
- 21          (H) Consolidated tax allocation agreements;



- 1           (4) Any pledge of the insurer's stock, including stock of  
2           any subsidiary or controlling affiliate, for a loan  
3           made to any member of the insurance holding company  
4           system;
- 5           (5) If requested by the commissioner, financial statements  
6           of an insurance holding company system[-], including  
7           all affiliates. Financial statements may include but  
8           are not limited to annual audited financial statements  
9           filed with the Securities and Exchange Commission  
10          pursuant to the Securities Act of 1933, as amended, or  
11          the Securities Exchange Act of 1934, as amended. An  
12          insurer required to file financial statements pursuant  
13          to this paragraph may satisfy the request by providing  
14          the commissioner with the most recently filed  
15          financial statements of the parent corporation that  
16          have been filed with the Securities and Exchange  
17          Commission;
- 18          (6) Other matters concerning transactions between  
19          registered insurers and any affiliates as may be  
20          included from time to time in any registration forms  
21          adopted or approved by the commissioner; [~~and~~]



- 1 (7) Statements that the insurer's board of directors  
2 oversees corporate governance and internal controls  
3 and that the insurer's officers or senior management  
4 have approved, implemented, and continue to maintain  
5 and monitor corporate governance and internal control  
6 procedures[-]; and
- 7 (8) Any other information required by the commissioner by  
8 rule not inconsistent with this section."

9 SECTION 4. Section 431:11-107, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§431:11-107 **Examination** (a) Subject to the limitation  
12 contained in this section and in addition to the powers that the  
13 commissioner has under article 2 relating to the examination of  
14 insurers, the commissioner may examine any insurer registered  
15 under section 431:11-105 and its affiliates as reasonably  
16 necessary to ascertain the financial condition of the insurer,  
17 including the enterprise risk to the insurer by the ultimate  
18 controlling party, or by any entity or combination of entities  
19 within the insurance holding company system, or by the insurance  
20 holding company system on a consolidated basis.



1           (b) ~~[To evaluate whether the operations of an ultimate~~  
2 ~~controlling person, affiliate, or any combination of entities~~  
3 ~~within the insurance holding company system may adversely and~~  
4 ~~materially affect the operations, management, or financial~~  
5 ~~condition of an insurer, the]~~ The commissioner may order any  
6 insurer registered under section 431:11-105 to:

- 7           (1) Produce the records, books, or other information in  
8           the possession of the insurer or its affiliates that  
9           are reasonably necessary to determine compliance with  
10          this article; and
- 11          (2) Determine compliance with this article, produce  
12          information not in the possession of the insurer if  
13          the insurer can obtain access to that information  
14          pursuant to contractual relationships, statutory  
15          obligations, or other methods. In the event the  
16          insurer cannot obtain the information requested by the  
17          commissioner, the insurer shall provide the  
18          commissioner a detailed explanation of the reason that  
19          the insurer cannot obtain the information and the  
20          identity of the holder of information. Whenever it  
21          appears to the commissioner that the detailed



1 explanation is without merit, the commissioner may  
2 require, after notice and hearing, the insurer to pay  
3 a penalty of not less than \$100 and not more than \$500  
4 for each day's delay, or may suspend or revoke the  
5 insurer's license.

6 (c) The commissioner may retain at the registered  
7 insurer's expense attorneys, actuaries, accountants, and other  
8 experts not otherwise a part of the commissioner's staff as  
9 shall be reasonably necessary to assist in the conduct of the  
10 examination under [~~subsections (a) and (e).~~] this section. Any  
11 persons so retained shall be under the direction and control of  
12 the commissioner and shall act in a purely advisory capacity.

13 (d) Each registered insurer producing for examination  
14 records, books, and papers pursuant to [~~subsections (a) and (e).~~]  
15 this section shall be liable for and shall pay the expense of  
16 the examination in accordance with article 2.

17 (e) In the event that [+

18 ~~(1) An insurer fails to comply with an order pursuant to~~  
19 ~~subsection (b); or~~

20 ~~(2) The commissioner, upon evaluating whether the~~  
21 ~~operations of an ultimate controlling person,~~



1 ~~affiliate, or any combination of entities within the~~  
2 ~~insurance holding company system pursuant to~~  
3 ~~subsection (b), has reasonable cause to believe that:~~

4 ~~(A) The operations of the ultimate controlling~~  
5 ~~person, affiliate, or any combination of entities~~  
6 ~~within the insurance holding company system may~~  
7 ~~adversely and materially affect the operations,~~  
8 ~~management, or financial condition of an insurer,~~  
9 ~~or~~

10 ~~(B) The commissioner is unable to obtain relevant~~  
11 ~~information from the controlled insurer,~~  
12 ~~the commissioner may examine the ultimate controlling~~  
13 ~~person, affiliate, or any combination of entities~~  
14 ~~within the insurance holding company system.]~~

15 an insurer fails to comply with an order, the commissioner may  
16 examine the affiliates to obtain the information. The  
17 commissioner may also issue subpoenas, administer oaths, and  
18 examine under oath any person for purposes of determining  
19 compliance with this section. Upon the failure or refusal of  
20 any person to obey a subpoena, the commissioner may petition a  
21 court of competent jurisdiction, and upon proper showing, the



1 court may enter an order compelling the witness to appear and  
2 testify or produce documentary evidence. Failure to obey the  
3 court order shall be punishable as contempt of court. Every  
4 person shall be obliged to attend as a witness at the place  
5 specified in the subpoena, when subpoenaed, anywhere within the  
6 State. Every person shall be entitled to the same fees and  
7 mileage, if claimed, as a witness in a court of record, which  
8 fees, mileage, and actual expense, if any, necessarily incurred  
9 in securing the attendance of witnesses, and their testimony,  
10 shall be itemized and charged against, and be paid by, the  
11 company being examined.

12 (f) ~~[An examination of affiliates by the commissioner~~  
13 ~~under subsection (e) shall specify the grounds for the~~  
14 ~~examination and shall be confined to those specified grounds.]~~  
15 A domestic insurance holding company system shall be exempt from  
16 this section."

17 SECTION 5. Section 431:11-108, Hawaii Revised Statutes, is  
18 amended by amending subsection (c) to read as follows:

19 "(c) To assist in the performance of the commissioner's  
20 duties, the commissioner:



- 1           (1) May share documents, materials, or other information,  
2           including the confidential and privileged documents,  
3           materials, or information subject to subsection (a),  
4           with other state, federal, and international  
5           regulatory agencies, with the National Association of  
6           Insurance Commissioners and its affiliates and  
7           subsidiaries, and with state, federal, and  
8           international law enforcement authorities, including  
9           members of any supervisory college described in  
10          section 431:11-107.5; provided that the recipient  
11          agrees in writing to maintain the confidentiality and  
12          privileged status of the document, material, or other  
13          information, and has verified in writing the legal  
14          authority to maintain confidentiality;
- 15          (2) Notwithstanding paragraph (1) to the contrary, may  
16          only share confidential and privileged documents,  
17          material, or information reported pursuant to section  
18          [~~431:11-105(1)~~] 431:11-105(b)(1) with commissioners of  
19          states having statutes or regulations substantially  
20          similar to subsection (a) and who have agreed in  
21          writing not to disclose such information;





- 1           (3) May receive documents, materials, or information,  
2           including otherwise confidential and privileged  
3           documents, materials, or information from the National  
4           Association of Insurance Commissioners and its  
5           affiliates and subsidiaries and from regulatory and  
6           law enforcement officials of other foreign or domestic  
7           jurisdictions, and shall maintain as confidential or  
8           privileged any document, material, or information  
9           received with notice or the understanding that it is  
10          confidential or privileged under the laws of the  
11          jurisdiction that is the source of the document,  
12          material, or information; and
- 13          (4) Shall enter into written agreements with the National  
14          Association of Insurance Commissioners governing  
15          sharing and use of information provided pursuant to  
16          this article and consistent with this subsection that  
17          shall:
- 18                (A) Specify procedures and protocols regarding the  
19                confidentiality and security of information  
20                shared with the National Association of Insurance  
21                Commissioners and its affiliates and subsidiaries



1           pursuant to this article, including procedures  
2           and protocols for sharing by the National  
3           Association of Insurance Commissioners with other  
4           state, federal, or international regulators;

5           (B) Specify that ownership of information shared with  
6           the National Association of Insurance  
7           Commissioners and its affiliates and subsidiaries  
8           pursuant to this article remains with [~~and for~~  
9           ~~use by~~] the commissioner and specify that the  
10          National Association of Insurance [~~Commissioners~~  
11          ~~and~~] Commissioners' use of the information is  
12          subject to the direction of the commissioner;

13          (C) Require that prompt notice be given to an insurer  
14          whose confidential information is in the  
15          possession of the National Association of  
16          Insurance Commissioners pursuant to this article  
17          and require that the insurer is subject to a  
18          request or subpoena from the National Association  
19          of Insurance Commissioners for disclosure or  
20          production; and



1           (D) Require the National Association of Insurance  
2           Commissioners and its affiliates and subsidiaries  
3           to consent to intervention by an insurer in any  
4           judicial or administrative action in which the  
5           National Association of Insurance Commissioners  
6           and its affiliates and subsidiaries may be  
7           required to disclose confidential information  
8           about the insurer shared pursuant to this  
9           article."

10          SECTION 6. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12          SECTION 7. This Act shall take effect on January 1, 2112.



13

**Report Title:**

Insurance; Insurance Holding Company System; Domestic Insurance Holding Company System; Insurance Division

**Description:**

Makes certain clarifying amendments to article 11 of the State insurance code, relating to the insurance holding company system. Takes effect on 1/1/2112. (HD1)

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